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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 546

WALLACE S. HANDY, COLLECTOR OF INTERNAL Revenue for the District of Delaware

v.

DELAWARE TRUST COMPANY, EXECUTOR UNDER THE Last Will and Testament of William du Pont, Deceased, et al.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE COLLECTOR

OPINION BELOW

The opinion of the District Court is reported in 51 F. (2d) 867.

JURISDICTION

The case is here on the certificate of the Circuit Court of Appeals under Section 239 of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Does the second sentence of Section 302 (c) of the Revenue Act of 1926 violate the due process

clause of the Fifth Amendment to the Constitution of the United States.?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

These are printed in Appendix A, pp. 31–35, of our brief in *Heiner* v. *Donnan,* No. 514.

STATEMENT

The certificate (pp. 1–2) sets forth the facts as follows:

On May 25th, 1926, William du Pont transferred by indenture of trust to Delaware Trust Company, as trustee, for the benefit of his son, William du Pont, jr., et al., securities having a value at the time of the donor's death of $2,025,000.00; on May 25th, 1926, he transferred to same trustee for the benefit of his daughter, Marion du Pont Somerville, et al., securities having a value at the time of his death of $3,313,518.46; on July 12th, 1927, he transferred to the same trustee for the benefit of his daughter-in-law, Jean Liseter du Pont, et al., securities having a value at the time of his death of $583,529.33; on September 21, 1927, he transferred to the same trustee for the benefit of his stepson, George Zinn, et al., securities having a value at the time of his death of $369,257.78. Each of the transfers was a complete and irrevocable gift, inter vivos, and without consideration.

William du Pont died on January 20, 1928. His executor filed an estate-tax return and reported for information purposes the said four transfers but

did not include the amounts thereof in the gross estate of the decedent for Federal estate-tax purposes. Upon audit the Commissioner of Internal Revenue determined an additional tax due from his estate by including therein the value at the time of his death of the properties so transferred by him in excess of the statutory exemption on authority of the second sentence of Section 302 (c) of the Revenue Act of 1926 (44 Stat. 70, chapter 27), which, without regard to what the fact may be, provides that such transfers shall be deemed and held to have been made in contemplation of death. The executor paid the Collector $283,130.20, being twenty per centum of the additional tax and interest so determined by the Commissioner and gave a bond to the Commissioner conditioned for the payment, if due, of the balance of the said additional assessment arising by reason of the inclusion in the gross estate of the decedent of the properties passing under said transfers, or the production of proof of payment of eighty per centum of the additional tax to the State of Delaware or other States. After claim for refund and its rejection, the executor instituted this action in the District Court of the United States for the District of Delaware to recover the sum paid on account of said additional assessment and interest. The case was tried to the court without a jury. The trial court found as facts that no one of the said transfers was made in contemplation of death and held the

second sentence of Section 302 (c) of the Revenue Act of 1926 unconstitutional because violative of the due-process clause of the Fifth Amendment. From a judgment for the executor for the sum of $274,487.07 the Collector appealed.

ARGUMENT

The question involved is the same as the first question certified in No. 514, *D. B. Heiner, Collector of Internal Revenue, 23d District of Pennsylvania,* v. *John H. Donnan, Sidney B. Donnan, Alvan E. Donnan, et al., etc.,* and the Government's brief in that case filed simultaneously herewith discusses the principles of law applicable to the question common to both cases.

For the reasons urged in that brief, the question should be answered in the negative.

Respectfully submitted.

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